IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.165 OF 2005.

Shri Digamber Sadashiv Vaidya
(deceased - through)
Smt.Shashikant Digamber Vaidya
& Anr. : Appellants.

versus

Shri Gurudev Datta Sansthan : Respondent.

Mr.Bharat H. Mehta for the appellants.
Mr.Sandesh Deshpande for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 26th APRIL 2005.

ORAL ORDER

1. Heard advocates for the appellants and respondent. This second appeal is filed by the original defendant/tenant. The suit was filed by the trust/respondent for possession of one room out of three rooms. The plaintiff/respondent has

accepted the appellant as tenant of two rooms but they claimed that so far as third room is concerned, he was in permissive possession and not the tenant. The appellant claimed to be the tenant of the third room also.

2. When questioned as to what was the substantial question of law involved. The counsel for the appellants contended that the trial Court had given findings in favour of the appellants whereas the appellate Court reversed the findings and, therefore the matter requires to be admitted. He also contended that for 50 years the tenant was in possession of third room which was connected to two other rooms and that he had a separate electric metre for that room. that in a letter given by the respondent/landlord to the Municipal Council Pen, wherein the present appellant is shown as tenant of one room, then these were the strong circumstances enough to set aside the order of the appellate court.

3. I am not at all convinced by any of the submissions made by the counsel for the appellants. Firstly, there is no substantial question of law involved in this matter and,

secondly, if for 50 years i.e. prior to issuance of termination notice the relations of the respondent/landlord with the appellant/tenant were good and cordial, then there was no obstacle in the way of the respondent in treating the appellant as tenant of the third room when he was already tenant of two other rooms. When the documents viz. receipts issued by the respondent continuously show that the payment in respect of third room was as a donation then that is a strong circumstance going against the appellant. The so called letter written by the respondent to the Pen Municipal Council dated 27th June 1986, which was given to me by the counsel for the appellant, shows that Digambar Vaidya described as tenant. But, as rightly argued by the counsel for the respondent, no room number is given in this letter. It cannot therefore be said that this is an admission of the landlord regarding appellant being tenant in respect of third room. There is no substance in this appeal. It is dismissed. Prayer for stay is rejected.

[D.G.DESHPANDE]

26/04/2005 JUDGE.